

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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EARIC JOHNSON,

Civil No. 06-4156 (MJD/AJB)

Petitioner,  
v.

**REPORT AND RECOMMENDATION**

COMMISSIONER OF CORRECTIONS  
JOAN FABIAN, ET AL., MARTIN COUNTY:  
JUDGE BRUCE GROSS, COUNTY ATTY:  
JOEL WELDER, ET AL., MN STATE  
PUBLIC DEFENDERS OFFICE, ET AL.,

Respondents.

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This matter is before the undersigned United States Magistrate Judge on Petitioner's application for a writ of habeas corpus. The matter has been referred to this Court for report and recommendation pursuant to 28 U.S.C. § 636 and Local Rule 72.1. For the reasons discussed below, it is recommended that this action be summarily DISMISSED WITHOUT PREJUDICE.

Petitioner's habeas corpus petition, (Docket No. 1), was filed on October 16, 2006. When the case was initially reviewed pursuant to Rule 4 of the Rules Governing Section 2254 Cases In The United States District Courts, it appeared to the Court that Petitioner had not exhausted all of his available state court remedies for all of his current habeas corpus claims, as is clearly required by 28 U.S.C. § 2254(b). See also O'Sullivan v. Boerckel, 526 U.S. 838, 845 (1999). Therefore, by order dated October 18, 2006, (Docket No. 5), the Court directed Petitioner to file an affidavit explaining how he had satisfied the exhaustion of state remedies requirement for each claim listed in his petition. Petitioner was advised that if he did not file such an affidavit within 20 days, the Court would recommend that this action be summarily

dismissed without prejudice.

The deadline for filing the affidavit required by the Court's prior order has now passed, and Petitioner has not yet filed any such affidavit. Indeed, Petitioner has not communicated with the Court at all since he filed his original petition. Therefore, it is now recommended, in accordance with the Court's prior order, that Petitioner be deemed to have abandoned this action, and that the action be dismissed without prejudice pursuant to Fed. R. Civ. P. 41(b). See Link v. Wabash Railroad Co., 370 U.S. 626, 630-31 (1962) (recognizing that a federal court has the inherent authority to "manage [its] own affairs so as to achieve the orderly and expeditious disposition of cases").

Based upon the above, and upon all the records and proceedings herein,

IT IS HEREBY RECOMMENDED that:

This action be summarily **DISMISSED WITHOUT PREJUDICE**.

Dated: November 15, 2006

s/ Arthur J. Boylan  
ARTHUR J. BOYLAN  
United States Magistrate Judge

Pursuant to Local Rule 72.2(b), any party may object to this Report and Recommendation by filing with the Clerk of Court, and by serving upon all parties, written objections which specifically identify the portions of the Report to which objections are made and the bases for each objection. This Report and Recommendation does not constitute an order or judgment from the District Court and it is therefore not directly appealable to the Circuit Court of Appeals. Written objections must be filed with the Court before November 30, 2006.